

**REMARKS**

A final Office Action was mailed on April 03, 2008. Claims 1, 2, 4 – 9, 11 – 18 and 21 – 26 are pending; and that claims 1, 2, 4 – 9, 11 – 18 and 21 – 26 stand rejected under 35 U.S.C. §103.

**Rejections under 35 U.S.C. §103**

Claims 1 – 2, 4 – 9 and 11 – 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herz (U.S. Pat # 5,758,257), in view of Shapira (U.S. Pat # 7,058,806) and Kim (U.S. PG-PUB 2003/0156134).

Claims 17 – 18 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herz, in view of Cook (U.S. PG-PUB 2003/0193504).

Claims 21 – 22 and 24 – 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herz and Cook, and further in view of Shapira.

**Response to Arguments**

Reconsideration is respectfully requested in view of the arguments submitted herewith. Applicant respectfully reiterates and continues the arguments set forth in Applicant's responses dated August 25, 2006, January 19, 2007, July 10, 2007, and January 4, 2008.

Applicant submits that for at least the following reasons, claims 1 – 2, 4 – 9 and 11 – 16 are patentable over Herz, Shapira, and Kim, alone or in combination.

For example, Applicant's claim 1 recites:

*“A method for making a recommendation in a lifestyle recommendation machine, the method comprising:*

*providing a celebrity profile of a celebrity to a user;*

*making a recommendation to the user for an item, service, and/or event based on the celebrity profile; and*

*reporting the recommendation to the user through an image of the celebrity while simultaneously displaying the image of the celebrity to create an appearance during the reporting that the celebrity is making the recommendation to the user.”*

In the Office Action, page 3, lines 1 – 15, it is alleged that Herz, column 45, lines 34 – 55, discloses the claim element “*reporting the recommendation to the user*”. The Office pointed out the dictionary definition of “reporting” and asserted that there is no patentable distinction between the claimed “reporting” and the disclosure of Herz. Applicant respectfully disagrees.

Herz, column 45, lines 34 – 55, discloses that from the agreement matrix, a list of preferred programs is determined. Applicant submits that although the listing is available for user’s perusal and selection of the desired programs, nothing in Herz teaches or suggests that there is an affirmative **reporting by the profiled celebrity** to create an appearance during the reporting that the celebrity is making the recommendation to the user. Applicant submits that it is clear from the claim language that the **reporting by the profile celebrity** is patentably distinct from the teaching of Herz, despite the dictionary definition of “reporting” pointed out by the Office.

In the Office Action, page 3, line 16 through page 4, line 8, it is also alleged that the combination of Herz and Shapira meets the claim element “*reporting the recommendation to the user through an image of the celebrity while simultaneously displaying the image of the celebrity*”. Applicant respectfully disagrees with such assertion.

Although the Office has argued that an image of the instant celebrity accompanies that instant recommendation list of programs presented to the subscriber, **which notifies** the subscriber that the recommendation list of program are indeed based on the instant celebrity profile, Applicant submits that this is just an enhanced channel listing in Herz, where the celebrity profile is also identified by the picture of the celebrity. Notifying the user that the recommendation is based on a celebrity profile is not the same as the affirmative **reporting by the profiled celebrity** to create an appearance during the reporting that the celebrity is making the recommendation to the user, because the former informs the users what profile is being used

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and would appear that the notification comes from the system, not the celebrity; while the later reports recommendation to the user with the appearance during the reporting that the celebrity is making the recommendation to the user. Therefore, Applicant submits that Herz and Shapira, alone or in combination, fail to teach or suggest the affirmative **reporting by the profiled celebrity** to create an appearance during the reporting that celebrity is making the recommendation to the user.

To address the new grounds of rejection, Applicant points out that claim 1 requires:

*“reporting the recommendation to the user through an image of the celebrity while simultaneously displaying the image of the celebrity to **create an appearance during the reporting that the celebrity is making the recommendation to the user.**”*

In the Office Action, page 8, it is conceded by the Office that Herz does not discuss any images associated with a celebrity or any other profile, and that Shapira does not discuss anything to “**create an appearance during the reporting that the celebrity is making the recommendation to the user,**” as claimed. Because of these deficiencies in Herz and Shapira, the Office cited Kim, which apparently relates to organizational avatars used in on-line services.

In the Office Action, page 8, line 13, it is alleged that an organizational avatar represents a “celebrated entity” can be interpreted as a celebrity. Applicant respectfully disagrees with such assertion. As pointed out by the Office in the Office Action, page 5, lines 18 – 19, a celebrity refers to an individual. Applicant submits that a “celebrated entity” can be interpreted as a famous organization, but not as a celebrity. Although the word “celebrated” is used as an adjective to describe the nature of the entity, the entity is still an organization, not an individual or celebrity.

Applicant submits that using the organizational avatars taught by Kim does not “**create an appearance during the reporting that the celebrity is making the recommendation to the user,**” as claimed. This is because, as disclosed in Kim, paragraph [0030], the organizational avatars are used for promoting the products or services of the organization. Furthermore, since at least a portion of the image of the avatar is typically owned by the organization (Kim,

paragraph [0021]), a user will naturally think that **any recommendation made by the avatar, is made on behalf of the organization, not by the celebrity** himself or herself. Therefore, the use of an organizational avatar can only create an appearance that **the organization is making a recommendation to the user**, but not an appearance that the celebrity is making a recommendation to the user.

Apparently, Kim teaches an avatar that represents an organization to promote products and services for the organization (Kim, paragraph [0030]). Applicant submits that an organization is not an individual; it does not have a celebrity profile that can be used as basis for making lifestyle recommendations. Since a celebrity has an identity and lifestyle that a user can associate with and therefore will be more likely to trust the lifestyle recommendation made by the celebrity. On the other hand, there is none or hardly any lifestyle of an organization that a user can associate with. Therefore, one ordinarily skilled in the art would not have come up with the claimed feature of “*reporting the recommendation to the user through an image of the celebrity while simultaneously displaying the image of the celebrity to **create an appearance during the reporting that the celebrity is making the recommendation to the user**,” in view of the combined teachings of Herz, Shapira and Kim.*

Withdrawal of the rejection of claim 1 under 35 U.S.C. §103(a) is respectfully requested. Independent claims 15 and 16 contain similar features as discussed above for claim 1 and therefore should also be patentable over Herz, Shapira and Kim, alone or in combination. Dependent claims 2, 4 – 9 and 11 – 14 are also believed to be patentable because they depend from claim 1 with each claim containing further distinguishing features. Withdrawal of the rejection of claims 2, 4 – 9 and 11 – 16 35 U.S.C. §103(a) is respectfully requested.

Applicant further submits that for at least the following reasons claims 17 – 18 and 21 – 26 are patentable over Herz and Cook, alone or in combination.

For example, Applicant’s claim 17 requires:

*“substituting a user profile based on explicit and/or implicit directions of a user with a profile of **a synthetic celebrity or a fictitious character played by a real celebrity**; making a recommendation for an item, service, and/or event based on the profile of the synthetic celebrity or fictitious character; and reporting the recommendation to the user through the synthetic celebrity or fictitious character.”*

In the Office Action, page 4, it is conceded by the Office that Herz does not explicitly state whether the celebrity is associated with a real person, i.e., real celebrity, or is associated with the fictitious character played by the real person. Because of this deficiency, the Office cited Cook (Abstract; paragraphs [0003 – 0004] and [0009 – 0018]), which teaches the benefits of creating a synthetic profile, which allows the user to create a profile from a disparate range of characteristics.

In the Office Action, page 5, line 12 through page 6, line 9, it is alleged that Cook teaches the creation of synthetic celebrity. Applicant respectfully disagrees. Although Cook (paragraph [0116]) discloses that their teaching may be applied to numerous other endeavors, including equipment for suggesting behaviors for humans, actors, electronic equipment, announcement devices, etc, there is no explicit teaching of the creation of synthetic celebrity. A synthetic character that could be used by a wide range of people/audiences does not make it a synthetic celebrity, because a generic character can also be used by a wide range of people/audiences. Applicant submits that Cook does not disclose or suggest that the synthetic character is well-known or famous or celebrated within a community. Therefore, Cook does not teach the creation of synthetic celebrity.

Applicant respectfully submits that the only relevance of Cook to the present claims is the use of the term “synthetic” and the creation of a “synthetic character.” There is no discussion or suggestion in Cook to represent **a synthetic celebrity or a fictitious character played by a real celebrity** as required by the claims. Applicant submits that the limitation of a synthetic celebrity or a fictitious character played by a real celebrity is clearly patentably distinct from a real

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celebrity. As suggested by the Office Action, page 5, at least for privacy concerns, a real celebrity might not want his own personal profile to be available to the public, and would agree to have a profile generated that is associated with one or more of the fictitious character that he has played to make available. Therefore, as admitted by the Office, there is real distinction between a synthetic celebrity or a fictitious character played by a real celebrity and a real celebrity. Contrary to the assertion made by the Office, Applicant submits that this real distinction makes it not obvious to for one ordinarily skilled in the art to come up with the generating recommendations based on *a profile of a synthetic celebrity or a fictitious character played by a real celebrity*.

In view of at least the foregoing, Applicant respectfully submits that one ordinarily skilled in the art would not consider it obvious to modify Herz in view of Cook, with or without the teaching of Shapira to come up with the claimed feature in claim 17. Claims 18 and 21 – 26 are also believed to be patentable because they depend from claim 17, with each claim containing further distinguishing features. Withdrawal of the rejection of claims 17 – 18 and 21 – 26 under 35 U.S.C. §103(a) is respectfully requested.

An earnest effort has been made to be fully responsive to the Examiner's objections. In view of the above remarks, it is believed that claims 1, 2, 4 – 9, 11 – 18 and 21 – 26 are in condition for allowance. Passage of this case to allowance is earnestly solicited. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Application Number: 09/815,856  
Attorney Docket: US 010094  
Response to Office Action of April 03, 2008

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Respectfully submitted,

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A handwritten signature in black ink, appearing to be 'H. Wolin', written over a horizontal line.

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